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Title XVII. Of Transaction or Compromise (Art. 3071 - 3083)

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fears that such administrator, curator, executor or tutor is mismanaging the property under his charge, and that they are in danger of being injured seriously by his conduct, and praying that he shall be required to give new security.

RCC—3057, 3070. Acts 1880, No. 46.

RCC 1870, Art. 3069. (Same as Art. 3069 of Proposed Revision of 1869; similar to Acts 1859, No. 222, §1 [RS §§16, 1473, 3716, 3737, 3858])
Same as above.

CC 1825. No corresponding article.

CC 1808. No corresponding article.

CN 1804. No corresponding article.

ART. 3070. On due proof being made of maladministration by any curator, administrator, executor or tutor cited, the court shall require him to give a new bond, with other sufficient security, for the faithful administration of the property; and upon failure to do so within three days after such order, he shall be forthwith removed from the administration thereof, and the judge shall proceed at once to the appointment of another curator, administrator, executor or tutor, who shall be required to give security in manner and form as now required by law; and this being done, the former sureties on the bond shall be released from all liability for any maladministration of such administrator, curator, executor or tutor, from and after execution of the new bond with security as aforesaid.

RCC—302 *et seq.*, 356, 357, 1158, 1159, 3059, 3069. Acts 1880, No. 46.

RCC 1870, Art. 3070. (Same as Art. 3070 of Proposed Revision of 1869; same as Acts 1859, No. 222, §2 [RS §§17, 1474, 3717, 3738, 3859])
Same as above.

CC 1825. No corresponding article.

CC 1808. No corresponding article.

CN 1804. No corresponding article.

TITLE XVII—OF TRANSACTION OR COMPROMISE*

*See general comment by redactors, Projet, p. 356.

ART. 3071. A *transaction* or *compromise* is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.

This contract must be reduced into writing.

RCC—1403, 1761, 1765, 1771, 1778, 1797, 1846, 2275, 2277, 2998, 3010, 3072 *et seq.*, 3084, 3099, 3100, 3102, 3132. Acts 1914, No. 20, §17 (as am. by Acts 1918, No. 38, §1).

RCC 1870, Art. 3071.

Same as above.

CC 1825, Art. 3038.

Same as above.

(No reference in Projet)

La transaction est une convention entre deux ou plusieurs personnes, qui, pour prévenir ou terminer un procès, règlent leurs différends de gré à gré, de la manière dont elles conviennent, et que chacune d'elles préfère à l'espérance de gagner, jointe au péril de perdre.

Ce contrat doit être rédigé par écrit.

CC 1808, p. 434, Art. 1.

A transaction is an agreement between two or more persons who for preventing or putting an end to a law suit, adjust their differences, by mutual consent, in the manner which they agree on and which every one of them prefers to the hope of gaining, balanced by the danger of losing.

Par. 2 same as par. 2, above.

-p. 435, Art. 1.

Same as above; but comma (,) after "transaction"; no punctuation after "personnes."

CN 1804, Art. 2044.

Compromise is a contract whereby the parties terminate a litigation which has arisen, or prevent one from arising.

Par. 2 same as par. 2, above.

La transaction est un contrat par lequel les parties terminent une contestation née, ou préviennent une contestation à naître.

Par. 2 same as par. 2, above.

ART. 3072. A man to transact must have the capacity to dispose of the things included in the transaction.

The tutor of a minor or the curator of a person interdicted or absent can not make a transaction without being authorized thereto by the judge.

RCC—353, 361, 370, 373, 376, 415, 1782 *et seq.*, 1839, 2384, 2436, 2446, 2997, 2998, 3010, 3071, 3101.

RCC 1870, Art. 3072.

(Same as Art. 3072 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 3039.

(No reference in Projet)

Par. 1 same as par. 1, above; but comma (,) after "transact."

The tutor or curator of a minor or of a person interdicted or absent, cannot make a transaction without being authorized thereto by the judge.

Pour transiger il faut avoir la capacité de disposer des objets compris dans la transaction.

Le tuteur ou curateur du mineur, de l'interdit ou de l'absent, ne peut transiger sans autorité de justice.

CC 1808, p. 434, Art. 2.

Same as above; but comma (,) after "man."

-p. 435, Art. 2.

Same as above; but comma (,) after "Pour transiger", and after "l'interdit."

CN 1804, Art. 2045, pars. 1, 2.

Par. 1 same as par. 1, above.

The tutor can transact on behalf of the minor or interdict only in conformity with Article 467 under the title of *Minority, of Tutorship and of Emancipation*; and he can transact with the minor, after the latter comes of age, concerning the account of his tutorship, only in conformity with Article 472 under the same title.

Par. 1 same as par. 1, above.

Le tuteur ne peut transiger pour le mineur ou l'interdit que conformément à l'article 467 au titre de la *Minorité, de la Tutelle et de l'Emancipation*; et il ne peut transiger avec le mineur devenu majeur, sur le compte de tutelle, que conformément à l'article 472 au même titre.

ART. 3073. Transactions regulate only the differences which appear clearly to be comprehended in them by the intention of the parties, whether it be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties never intended to include in them.

The renunciation, which is made therein to all rights, claims and pretensions, extends only to what relates to the differences on which the transaction arises.

RCC—1945, 1950, 1959, 1962, 2037, 2286, 3074, 3078, 3081, 3083, 3122.

RCC 1870, Art. 3073. (Same as Art. 3073 of Proposed Revision of 1869)
Same as above.

CC 1825, Art. 3040. (No reference in Projet)
Par. 1 same as par. 1, above.

Les transactions ne règlent que les différends qui s'y trouvent nettement compris par l'intention des parties, soit qu'elle se trouve expliquée par une expression générale ou particulière, ou qu'elle soit une suite nécessaire de ce qui y est exprimé; et elle ne s'étend pas aux différends auxquels on n'a point pensé.

The renunciation, which is made therein to all rights, claims and pretensions, does extend only to what relates to the differences on which the transaction arises.

La renonciation, qui y est faite à tous droits, actions et prétensions, ne s'entend que de ce qui est relatif au différend qui y a donné lieu.

CC 1808, p. 434, Art. 3.

Transactions regulate only the differences which appear clearly to be comprehended in them, by the intention of the parties, whether it be explained in a general or particular expression: unless it be the necessary consequence of what is expressed: and they do not extend to differences which the parties never intended to include in them.

The renunciation which is made therein to all rights, claims and pretensions, does extend only to what relates to the differences from which said transaction arises.

-p. 435, Art. 3.

Same as above; but comma (,) after "règlent", and after "prétensions, ne s'entend"; "différend" misspelled "différent."

CN 1804, Art. 2048.

Transactions are confined to their object; the renunciation which is made therein to all rights, claims and pretensions, extends only to what relates to the differences from which the transaction arises.

Les transactions se renferment dans leur objet: la renonciation qui y est faite à tous droits, actions et prétensions, ne s'entend que de ce qui est relatif au différend qui y a donné lieu.

-Art. 2049.

Transactions regulate only the differences which appear to be comprehended in them, whether the parties have expressed their intentions in a general or particular manner, or whether this intention be the necessary consequence of what is expressed.

Les transactions ne règlent que les différends qui s'y trouvent compris, soit que les parties aient manifesté leur intention par des expressions spéciales ou générales, soit que l'on reconnaisse cette intention par une suite nécessaire de ce qui est exprimé.

ART. 3074. If he who has transacted concerning a right which he had in his own person, acquires afterwards a like right which belonged to another, the transaction can not be prejudicial to his new right.

RCC—3073.

RCC 1870, Art. 3074.

Same as above.

CC 1825, Art. 3041.

Same as above.

(No reference in Projet)

Si celui qui avait transigé d'un droit qu'il avait de son chef, acquiert ensuite un pareil droit du chef d'une autre personne, la transaction ne fera pas de préjudice à ce second droit.

CC 1808, p. 436, Art. 6.

Same as above.

-p. 437, Art. 6.

Same as above.

CN 1804, Art. 2050.

If he who has transacted concerning a right which he had in his own person, acquires afterwards a like right which belonged to another, he is not bound, with respect to the newly acquired right, by the prior transaction.

Si celui qui avait transigé sur un droit qu'il avait de son chef, acquiert ensuite un droit semblable du chef d'une autre personne, il n'est point, quant au droit nouvellement acquis, lié par la transaction antérieure.

ART. 3075. One may add to a transaction the stipulation of a penalty against the party who fails to perform it; and in this case the non-performance of what has been agreed on, gives a right to exact the penalty according to the tenor of the agreement, and pursuant to the rules recited in the title: *Of Conventional Obligations*.

RCC—1761, 1771, 1901, 1926, 2117 *et seq.*, 2125.

RCC 1870, Art. 3075.

Same as above.

CC 1825, Art. 3042.

Same as above; but no punctuation after "title."

(No reference in Projet)

On peut ajouter à une transaction la stipulation d'une peine contre celui qui manquera de l'exécuter; en ce cas, l'inexécution de ce qui est réglé donne le droit d'exiger la peine, conformément à ce qui a été convenu, et aux règles prescrites au titre des *obligations conventionnelles*.

CC 1808, p. 436, Art. 7.

One may add to a transaction, the stipulation of a penalty against the party who fails to perform it, and in this case the non performance of what has been agreed on, gives a right to exact the penalty according to the tenor of the agreement and pursuant to the rules recited in the title of *contracts and conventional obligations in general*.

-p. 437, Art. 7.

On peut ajouter à une transaction, la stipulation d'une peine contre celui qui manquera de l'exécuter; en ce cas, l'inexécution de ce qui est réglé, donne le droit d'exiger la peine, conformément à ce qui a été convenu, et aux règles prescrites au titre *des contrats, et des obligations conventionnelles en général*.

CN 1804, Art. 2047.

One may add to a transaction the stipulation of a penalty against the party who fails to perform it.

On peut ajouter à une transaction la stipulation d'une peine contre celui qui manquera de l'exécuter.

ART. 3076. The creditor who transacts with the surety of his debtor, may discharge the surety only, and the transaction will not diminish his right against the debtor. But if it is with the debtor himself that he has transacted, the surety will likewise have the benefit of the transaction, because his obligation is only an accessory to that of the principal debtor.

RCC—1771, 2098, 2205, 2206, 3035, 3036, 3045, 3059, 3060, 3062.

RCC 1870, Art. 3076.

Same as above.

CC 1825, Art. 3043.

Same as above.

(No reference in Projet)

Le créancier, qui transige avec la caution de son débiteur, peut ne décharger que la caution, et la transaction ne lui fera pas de préjudice à l'égard de ce débiteur; mais si c'est avec le débiteur même qu'il ait transigé, la transaction sera commune à la caution, parceque son obligation n'est qu'un accessoire de celle du principal débiteur.

CC 1808, p. 436, Art. 8.

Same as above; but "transacts" spelled "transacs"; no punctuation after "only", or after "of the transaction."

-p. 437, Art. 8.

Same as above; but comma (,) after "ce débiteur."

CN 1804. No corresponding article.

ART. 3077. A transaction made by one of the interested parties is not binding for the others, and can not be opposed by them.

RCC—1780, 1890, 1902, 1968, 2098, 2203, 2286.

RCC 1870, Art. 3077.

Same as above.

CC 1825, Art. 3044.

Same as above.

(No reference in Projet)

La transaction faite par l'un des intéressés, ne lie point les autres intéressés, et ne peut être opposée par eux.

CC 1808, p. 436, Art. 9.

Same as above; but comma (,) after "parties"; no punctuation after "others."

-p. 437, Art. 9.

Same as above.

CN 1804, Art. 2051.

Same as above.

Same as above; but no punctuation after "l'un des intéressés."

ART. 3078. Transactions have, between the interested parties, a force equal to the authority of things adjudged. They can not be attacked on account of any error in law or any lesion. But an error in calculation may always* be corrected.

RCC—1402, 1403, 1822, 1824, 1842, 1846(2), 1860 *et seq.*, 1901, 2230, 2286, 3073, 3079, 3082.

RCC 1870, Art. 3078.

Same as above.

CC 1825, Art. 3045.

Same as above.

(No reference in Projet)

Les transactions ont, entre les parties, une force pareille à l'autorité des choses jugées en dernier ressort.

Elles ne peuvent être attaquées pour erreur de droit, ni pour cause de lésion.

Mais l'erreur de calcul, dans une transaction, doit* être réparée.

CC 1808, p. 436, Art. 10.

Transactions have between the interested parties, a force equal to the authority of things adjudged, because they stand in the place of a judgment which is so much the stronger because all the parties have consented to it and because the engagement which delivers the parties from the inconvenience of a law suit, is altogether favorable. They cannot be attacked on account of any error in law or any lesion. But an error in calculation in a transaction may always* afterwards be corrected.

-p. 437, Art. 10.

Les transactions ont, entre les parties, une force pareille à l'autorité des choses jugées en dernier ressort, parce qu'elles tiennent lieu d'un jugement, d'autant plus ferme, que les parties y ont consenti, et que l'engagement qui délivre d'un procès, est toujours favorable.

Elles ne peuvent être attaquées pour cause d'erreur de droit, ni pour cause de lésion.

Par. 3 same as par. 3, above.

CN 1804, Art. 2052.

Transactions have, between the interested parties, a force equal to the authority of things adjudged.

They cannot be attacked on account of any error in law or any lesion.

Les transactions ont, entre les parties, l'autorité de la chose jugée en dernier ressort.

Par. 2 same as par. 2, above.

-Art. 2058.

An error in calculation in a transaction should be corrected.

L'erreur de calcul dans une transaction doit être réparée.

*Note error in English translation of French text; "may always" should be "in a transaction should" in CC 1825 and "should" in CC 1808.

ART. 3079. A transaction may be rescinded notwithstanding, whenever there exists an error in the person or on the matter in dispute. It may likewise be rescinded in the cases where there exists fraud or violence.

RCC—1819, 1828 *et seq.*, 1834 *et seq.*, 1838, 1839, 1841 *et seq.*, 1847, 1848, 1850 *et seq.*, 1881, 1893, 3078, 3080 *et seq.*, 3174.

RCC 1870, Art. 3079.

Same as above.

CC 1825, Art. 3046.

Same as above.

(No reference in Projet)

Néanmoins une transaction peut être rescindée, lorsqu'il y a erreur dans la personne [personnel ou sur l'objet de la contestation.

Elle peut l'être dans tous les cas où il y a dol ou violence.

CC 1808, p. 436, Art. 11.

A transaction may be rescinded notwithstanding, whenever it exists, an error in the person or on the matter in dispute. It may likewise be rescinded in the cases where there exists fraud or violence.

-p. 437, Art. 11.

Same as above; but "persoune" spelled "personne"; comma (,) after "Néanmoins", after "personne", and after "l'être."

CN 1804, Art. 2053.

Same as above.

Same as above; but no punctuation after "Néanmoins", or after "l'être."

ART. 3080. A transaction may also be rescinded, when it has been made in execution of a title which is null, unless the parties have expressly compromised on the nullity.

RCC—1824, 1828 *et seq.*, 2272, 3079, 3081.

RCC 1870, Art. 3080.

Same as above.

CC 1825, Art. 3047.

Same as above.

(No reference in Projet)

Il y a également lieu à l'action en rescision contre une transaction, lorsqu'elle a été faite en exécution d'un titre nul,* à moins que les parties n'aient expressément traité sur la nullité.

CC 1808, p. 436, Art. 12.

A transaction may be also rescinded when it has been made in execution of an illegal act,* unless the parties have expressly transacted on the said nullity.

-p. 437, Art. 12.

Same as above.

CN 1804, Art. 2054.

Same as CC 1825, Art. 3047, above.

Same as above.

*Note error in English translation of French text; "an illegal act" should be "a title which is null."

ART. 3081. A compromise entered into on documents which have since been found false, is null *in toto*.

RCC—1828, 1893, 1896, 3073, 3079, 3080, 3083.

RCC 1870, Art. 3081.

Same as above.

CC 1825, Art. 3048.

Same as above.

(No reference in Projet)

La transaction faite sur pièces, qui depuis ont été reconnues fausses, est entièrement nulle.

CC 1808, p. 436, Art. 13.

If a transaction has been grounded on forged writings which passed for true ones and the forgery be discovered afterwards, he who complains of it, may procure the transaction to be annulled in all that has been regulated on that foundation.*

-p. 437, Art. 13.

Same as above; but no punctuation after "pièces"; comma (,) after "qui."

CN 1804, Art. 2055.

Same as CC 1825, Art. 3048, above.

Same as above; but no punctuation after "qui."

*CC 1825, Art. 3048, above, contains a preferable translation of the same French text.

ART. 3082. A transaction respecting a suit terminated by a judgment, which acquired the force of the thing adjudged, and of which the parties, or either of them, was ignorant, is null. If, however, the judgment is one from which there could be an appeal, the transaction is valid.

RCC—1829, 1893, 2286, 3078, 3079, 3102.

RCC 1870, Art. 3082.

(Same as Art. 3082 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 3049.

(Projet, p. 356. Substitution ‡ adopted; no comment)

A transaction respecting a suit terminated by a judgment, which has acquired the force of the thing adjudged, and of which the parties, or either of them, was ignorant, is null. If, however, the judgment is one from which there could be an appeal, the transaction is valid.

La transaction sur un procès terminé par un jugement passé en force de chose jugée, dont les parties ou l'une d'elles n'avait pas connaissance, est nulle.

Si le jugement ignoré des parties était susceptible d'appel, la transaction serait valable.

CC 1808, p. 436, Art. 14.

If after judgment has been given in a law suit, without the knowledge of the parties, they agree it by a transaction, the transaction will subsist if there lies an appeal from the sentence, for since the law suit may still be continued, the event remains uncertain, but if there lies no appeal from the sentence, the transaction would be null. (Suppressed on recommendation of redactors; Projet, p. 356)

-p. 437, Art. 14.

Si, après un procès jugé à l'insu des parties, elles en transigent, la transaction subsistera, si on pouvait appeler de ce jugement, car, le procès pouvant encore durer, l'événement était incertain, mais s'il n'y avait point de voie d'appel, la transaction sera nulle. (Suppressed on recommendation of redactors; Projet, p. 356)

CN 1804, Art. 2056.

Same as CC 1825, Art. 3049, above.

La transaction sur un procès terminé par un jugement passé en force de chose jugée, dont les parties ou l'une d'elles n'avaient point connaissance, est nulle.

Si le jugement ignoré des parties était susceptible d'appel, la transaction sera valable.

ART. 3083. When parties have compromised generally on all the differences, which they might have had with one another, the titles which they then know nothing of and which were afterwards discovered, are not a cause of rescinding the transaction, unless they have been kept concealed on purpose* by the deed of one of the parties.

But the transaction becomes void, if it relates only to an object upon which it is proved by the titles newly discovered, that one of the parties has no right at all.

RCC—1402, 1403, 1830 *et seq.*, 3073, 3081.**RCC 1870, Art. 3083.**

(Same as Art. 3083 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 3050.

(No reference in Projet)

When the parties have compromised generally on all the differences, which they might have had with one another, the titles which they then know nothing of, and which were afterwards discovered, are not a cause of rescinding the transaction, unless they have been kept concealed on purpose* by the deed of one of the parties.

Lorsque les parties ont transigé généralement sur toutes les affaires qu'elles pouvaient avoir ensemble, les titres qui leur étaient alors inconnus, et qui auraient été postérieurement découverts, ne sont point une cause de rescision, à moins qu'ils n'aient été retenus* par le fait de l'une des parties.

But the transaction becomes void, if it relates only to an object, on which it is proved by the titles newly discovered, that one of the parties has no right at all.

Mais la transaction serait nulle, si elle n'avait qu'un objet, sur lequel il serait constaté, par des titres nouvellement découverts, que l'une des parties n'avait aucun droit.

CC 1808, p. 436, Art. 15.

When the parties have transacted generally on all the differences which they might have had with one another, the titles which they then knew nothing of and which were afterwards discovered are not a cause of rescinding the transaction, unless they have been kept concealed on purpose* by the deed of one of the parties.

Par. 2 same as par. 2, above; but no punctuation after "object."

CN 1804, Art. 2057.

When the parties have compromised generally on all the differences, which they might have had with one another, the titles which they then know nothing of, and which were afterwards discovered, are not a cause of rescinding the transaction, unless they have been kept concealed by the deed of one of the parties.

Par. 2 same as par. 2, above.

-p. 437, Art. 15.

Same as above; but no punctuation after "objet."

Same as above; but semicolon (;) after "de l'une des parties"; no punctuation after "nulle", or after "constaté."

*"On purpose" has no counterpart in French text.

TITLE XVIII—OF RESPITE

ART. 3084. A *respite* is an act by which a debtor, who is unable to satisfy his debts at the moment, transacts with his creditors and obtains from them time or delay for the payment of the sums which he owes to them.

RCC—1761, 1765, 1771, 1778, 2048, 2170, 3071, 3085 *et seq.*, 3097, 3556(11, 26). RS—1789.

RCC 1870, Art. 3084.

Same as above.

CC 1825, Art. 3051.

(Projet, p. 356. Amendment adopted; no comment)

Same as above; but comma (,) after "creditors."

On appelle atermoyement l'acte par lequel un débiteur qui est dans l'impossibilité de satisfaire à ses engagements, au moins pour le moment, transige avec ses créanciers, et en obtient terme et délai pour le payement des sommes qu'il leur doit.

CC 1808, p. 438, Art. 1.

A *respite* is an act by which a debtor who has failed, or is in such circumstances as to render his failure unavoidable, or is in the impossibility to satisfy his debts at the time they are due, transacts with his creditors and obtains from them time or delay for the payment of the sums which he owes to them and even sometimes a remission of a part of the said debt.

-p. 439, Art. 1.

On appelle atermolement, l'acte par lequel un débiteur, qui a fait faillite, ou qui est dans le cas de ne pouvoir s'empêcher de la faire, ou qui est dans l'impossibilité de satisfaire à ses engagements, au moins pour le moment, transige avec ses créanciers et en obtient terme ou délai pour le payement des sommes qu'il leur doit, et quelquefois même, une remise [remise] absolue d'une partie de la dette.

CN 1804. No corresponding article.